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OFFICE OF PETITIONS

In re Application of :
Travis Nichols et al. :
Application No. 09/727,364 : DECISION ON RENEWED PETITION
Filed: November 29, 2000 : UNDER 37 C.F.R. §1.181(A)
Attorney Docket Number: 688-098 :
Title: CUTTING DEVICE :

This is a decision on the renewed petition filed December 8, 2004, pursuant to 37 C.F.R. §1.181(a)¹, to revive the above-identified application.

The Office regrets the delay in issuing this decision.

The above-identified application became abandoned for failure to file a proper response to the Restriction Requirement, mailed December 3, 2001, which set a shortened statutory period to reply for one month. No extensions of time under the provisions of 37 C.F.R. 1.136(a) were received. Accordingly, the above-identified application became abandoned on January 4, 2002. A Notice of abandonment was mailed on March 18, 2003.

1 A grantable petition pursuant to 37 C.F.R. 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The original petition was submitted on August 4, 2003, and was dismissed via the mailing of a decision on September 3, 2003.

With the present petition, Petitioner has asserted that a response was filed on January 16, 2002. Petitioner has further included a copy of a postcard receipt, which evinces that a "response to election requirement," "replacement pages," a "certificate of mailing," and a "return postcard" were received in the Office on February 8, 2002. As such, it is clear that a response was received, and subsequently misplaced in the Office.

The present petition cannot be granted for the following two reasons.

First, Petitioner will note that the Restriction Requirement was mailed on December 3, 2001, and set a shortened statutory period to reply for one month. As such, a reply was due no later than January 3, 2002. Petitioner has indicated that a response was not submitted until January 16, 2002 - as such, a one-month extension of time was required in order to make this response timely. As a petition for an extension of time does not appear on the postcard, it does not appear that one was submitted in conjunction with this response to the restriction requirement, and as such, the holding of abandonment was proper. Since Petitioner has failed to provide a copy of this response with either the original or this renewed petition, the Office has no way of determining whether the response contained a request for an extension of time.

Secondly, Petitioner was aware that the Office has no record of the receipt of his response to the restriction requirement - yet it does not appear that a copy of the same has been provided with this petition. As such, *assuming arguendo* that the response had been timely filed, there would be nothing for the Examiner to consider, as there is no response in the electronic file.

As such, the renewed petition must be **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.181(a)." This is not a final agency action within the meaning of 5 U.S.C 704.

Petitioner may wish to consider the submission of a petition under 37 C.F.R. §§1.137(a) and/or (b).

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail², hand-delivery³, or facsimile⁴.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



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United States Patent and Trademark Office

2 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

3 Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

4 (571) 273-8300- please note this is a central facsimile number.